

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOSE GARCIA,

Petitioner,

vs.

NO. 05cv1275 MV/WDS

**STATE OF NEW MEXICO and
DEBACA COUNTY,**

Respondents

**MAGISTRATE JUDGE'S PROPOSED
FINDINGS AND RECOMMENDED DISPOSITION¹**

This is a Petition For a Writ of Habeas Corpus filed under 28 U.S.C. § 2254² by Jose Garcia. Garcia is proceeding *pro se*. Respondents have answered the Petition, and filed a motion to dismiss on May 1, 2006. (Docket No. 12) On May 9, 2006 the Court entered an order directing Petitioner to file a response to the motion to dismiss by May 31, 2006. (Docket No. 14) Petitioner has not filed a response. The United States Magistrate Judge, having considered the arguments of the parties, the record, relevant law, and being otherwise fully advised, finds and recommends that the Petition should be dismissed without prejudice. The court makes the following findings and recommended disposition.

¹Within ten (10) days after a party is served with a copy of these findings and recommendations, that party may, pursuant to 28 U.S.C. §636(b)(1), file written objections to such findings and recommendations. A party must file any objections with the Clerk of the U.S. District Court within the ten-day period allowed if that party wants to have appellate review of the findings and recommendations. If no objections are filed, no appellate review will be allowed.

²Mr. Garcia does not identify his petition as such, but he is a prisoner in State custody alleging violations of the Constitution.

CLAIMS

Petitioner alleges “numerous constitutional rights violations,” tampering with evidence, and unspecified due process violations. He moves to dismiss the underlying criminal case against him. The Court has read Petitioner’s *pro se* submissions liberally

FACTUAL AND PROCEDURAL BACKGROUND

On June 8, 2004 Petitioner, Jose Garcia, was charged in DeBaca County Magistrate’s Court with Murder, Tampering With Evidence, and False Imprisonment. On July 2, 2004 the criminal complaint was amended to add a firearms enhancement to the murder charge. On July 6, 2004 Petitioner’s counsel filed a Motion for Confidential Forensic Evaluation, which the Magistrate Court granted on July 9, 2004. Thereafter, the matter was transferred to DeBaca County District Court. On December 14, 2004 the parties agreed to entry of a Stipulated Order for Commitment and for Treatment. Petitioner was transferred to the Las Vegas Medical Center for psychiatric treatment. Petitioner has yet to be declared competent to stand trial, and the charges filed in 2004 are still pending.

ANALYSIS

Petitioner is currently in pre-trial custody and cannot rely upon 28 U.S.C. 2254 for relief, as that statute provides an avenue of relief for a “person in custody pursuant to the judgment of a State court.” There is no State court conviction or sentence for the Court to review. The Court agrees with Respondent that the petition, even liberally construed, does not challenge the validity of Petitioner’s commitment for psychiatric treatment. State court proceedings against Petitioner are ongoing, and federal habeas review at this point is clearly premature.

RECOMMENDED DISPOSITION

The Court recommends that Garcia's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. §2254, filed December 6, 2005 be DISMISSED WITHOUT PREJUDICE.

W. DANIEL SCHNEIDER
United States Magistrate Judge